IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1535 OF 2004

The State of Maharashtra ..Appellant

V/s.

Imran Rehman Khan ..Respondent

Mr.V.A.Thorat Advocate General with
Mrs.U.V.Kejriwal Additional Public prosecutor for
the appellant/State.

Mr.A.Majid Menon for the Respondent.

Coram : R.M.LODHA &
R.S.MOHITE,JJ

Date : 08.02.2005.

PC

. The present respondent has been granted interim bail by the Judge presiding over the Special court constituted under Prevention of Terrorist Act-2002 (POTA 2002) by order dated 16.12.2004 subject to final hearing of Bail application No.20/2004. Aggrieved thereby, the State has filed the appeal under Section 34 of the Prevention of Terrorist Act 2002 (POTA-2002).

2. Inter alia, it appears from the perusal of the impugned order that the learned Judge was of the view that the present respondent was entitled to claim parity alongwith accused no.1. He consequently granted interim bail to the present

respondent.

3. By a separate order passed by us today in Criminal Appeal No.1538/2004 and Criminal Appeal No.1115/2004, we have set aside the order of the Special Judge granting interim bail to the accused no.1. Resultantly, the interim bail granted by the learned Sessions Judge to the present respondent cannot be sustained.

4. During the course of hearing, the learned Counsel for the respondent expressed that the respondent may be permitted to withdraw Bail application No.20/2004 and liberty may be granted to the present accused/respondent to apply for bail after the witness/witnesses through whom confessional statements allegedly made by the respondent is/are sought to be proved by the prosecution. The submission of the learned Counsel appears reasonable to us.

5. We accordingly dispose of this Criminal appeal by following order :-

O R D E R

(i) The order dated 16.12.2004 granting interim bail to the accused/respondent passed by the Judge, presiding the Special Court constituted under

POTA-2002 is set aside. Bail application No.20/2004 is allowed to be withdrawn.

(ii) The prosecution is expected to expeditiously examine the witness/witnesses through whom confessional statements allegedly made by the present respondent are sought to be proved.

(iii) Liberty to the present respondent to make fresh Bail application after such witness/witnesses through whom confessional statements allegedly made by the present respondent is/are examined. The learned Special Judge shall hear and decide the fresh Bail application on its own merits uninfluenced by the earlier order and pass an appropriate order granting or refusing the bail.

(iv) All contentions of the parties are kept open to be agitated before the learned Special Judge at the time of hearing of a fresh Bail application.

(v) Appeal is disposed of accordingly.

(R.M.LODHA,J)

(R.S.MOHITE,J)